IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Bail Appl..No. 5590 of 2007()

CRIME NO. 608/07 OF TRIPUNITHURA POLICE STATION

PETITIONERS

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1. T.J.THOMAS,S/O. JOSEPH,AGED 41,
   RESIDING AT 13/B3,STAR HOMES, TRIPUNITHURA.

2. SOBIN VARGHESE,S/O VARGHESE,
   AGED 23, RESIDING AT 13/B3,STAR HOMES,
   TRIPUNITHURA.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED,
   BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM, KOCHI.

2. THE CIRCLE INSPECTOR OF POLICE,
   TRIPUNITHURA POLICE STATION.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5590 of 2007

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Dated this the 24th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether there are four accused persons. Crime was registered, inter alia, under Sections 326 and 427 r/w. 34 I.P.C. The alleged incident took place on 4.9.2007.

2. The crux of the allegations is that when three persons came in a car to Star Homes Apartments, the accused persons allegedly unnecessarily, according to the victims, picked up a quarrel with those present in the car. Those who came in the car were allegedly attacked. Dangerous weapons were allegedly used. It appears that the miscreants were waiting to attack some one. Injuries, including fracture, have been suffered. A dangerous weapon (steel rod) was allegedly used for the infliction of the injuries. Investigation is in progress. The petitioners apprehend imminent arrest.

3. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The real story is not reflected in the prosecution version at all, submits the counsel. According to the

petitioners, some immoral activities were going on in one of the flats in the complex. Respectable local residents haD taken objection to the visit of dis-reputed persons to that flat. The lady occupant of the flat and her associates were ill-disposed to the members of the other flats on that score. Because of that animosity the miscreants had come to the Apartments and had unleashed an attack on the occupants of the flats, who had raised objections against the immoral activity that is going on in the flat. According to the learned counsel for the petitioners, the alleged victims had gone over to the flat with the deliberate intention of attacking the persons, who had raised objections against the immoral activity. One of them, the first accused, had suffered some injuries. He was admitted in the hospital. He had lodged a statement before the police. His statement has been recorded by the police. Later the Residents' Association had lodged a complaint before the local police. No proper action is taken against the miscreants. According to the learned counsel for the petitioners, the police is acting hand in glove with the defacto complainant and his companions, who, it is submitted, are influential and affluent persons. The police are not taking proper action on the complaint of the first petitioner or the complaint of the Residents' Association. The petitioners apprehend that they will not get justice from the hands of the police. In these

circumstances it is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioners.

4. The learned Prosecutor stoutly opposes the application. The allegations are serious. Injuries suffered are grievous. The story urged that the defacto complainant and his friends had gone to the flat because of their nexus with one lady occupant is unjustified. Investigation revealed that they had gone to the flat not to meet the said lady but to call on a friend of theirs, who occupies a flat in the apartment complex. The learned Prosecutor initially submits that no crime whatsoever has been registered. Consequent to the insistence of the learned counsel for the petitioners, the Prosecutor has made available the statement given by the accused. The learned Prosecutor has read over to me the contents of the statement, which is seen given on 7.9.2007. The incident in this case had taken place on 4.9.2007. According to the police, the statement does not reveal any cognizable offence and that is why no crime has been registered.

5. Considering the nature of the contentions, the case diary was called for and perused by me. Having considered all the relevant inputs, I am not at all satisfied that there are any circumstances, which would justify the invocation of the extra ordinary equitable discretion under Section 438

Cr.P.C. in favour of the petitioners. The petitioners appear to have a grievance against the activities of one lady occupant in one of the flats in the Apartment and her associates. But as pointed out by the Prosecutor, the incident in this case cannot be linked to that grievance raised by them. Suffice it to say that considering the nature of the allegations, the nature of injuries and the stage of investigation, I am not persuaded to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioners. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. The learned counsel for the petitioners finally submits that a direction may be issued in favour of the petitioners permitting them to surrender before the learned Magistrate without the threat and risk of going to the police custody except through the Magistrate, if necessary. It is not necessary to issue any such direction. The petitioner can of course surrender before the learned Magistrate.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient

prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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